and entry of judgment under the original opinion, in the amount of $58,607.64 (R. 45, 82). Thus the total allowance upon the counterclaim was $141,308.93 (R. 45), and the Court of Claims, therefore, entered judgment in favor of the respondent in the amount of $21,895.89, with interest from April 6, 1936, the date of entry of the original judgment (R. 84).

SUMMARY OF ARGUMENT

The only question presented is whether or not the United States is entitled to recover interest on the unpaid taxes because of the unpaid deficiency assessment; no interest was claimed or awarded for the period prior to notice of the additional assessment. Section 250 (e) of the Revenue Act of 1918 expressly provides that the United States shall be entitled to interest at the rate of 1% per month after notice of the assessment and demand for payment by the Collector. Thus the question reduces itself to whether or not such notice and demand were made.

The Court of Claims found that "the Commissioner * * * duly notified plaintiff" of the assessment. Since the question of notice and demand was not contested in the Court of Claims, this general language is sufficient to indicate that the normal machinery was set in motion, resulting in notice of assessment and demand for its payment by the Collector. Under Section 3184 of the Revised Statutes, and under the established administrative practice, the Commissioner directs the Collector to

give notice and to make demand for the payment of additional taxes; both notice and demand are included in the same form. The presumption of official regularity is sufficient for a conclusion that both notice and demand were given.

The statement of the Court of Claims that no demand was made is found in its opinion, and may not be used to supplement the findings of fact. *United States* v. *Esnault-Pelterie,* 299 U. S. 201, 206.

The only error of the Court of Claims was its failure to award interest at the statutory rate of 12% per year, and respondent does not complain of this error. In the event that there should be doubt as to the meaning of the finding of the Court of Claims, the case should be remanded in order that new findings may be made.

ARGUMENT

The petition for a writ of certiorari was granted "limited to the question of the allowance of interest to the Government upon its claim." It is desirable at the outset to clarify the issues which exist between petitioner and the Government with the case thus limited.

1. Petitioner strenuously urges that it is inequitable to allow the Government interest on its claim when petitioner can receive none on its claim (Br. 12–18). This question, at least when phrased as the necessity of merging the cross-claims as of 1918, was the only question presented by the petition (Pet. 6, 9–10). It follows that the limitation

imposed by this Court requires that the Government's claim for interest must be considered independently of petitioner's inability to recover interest.[1]

2. Petitioner also argues that unpaid taxes for the year 1918 did not bear interest until a deficiency was assessed (Br. 18–19). So far as this case is concerned, we do not contest this proposition. See *Ford Motor Co.* v. *United States,* 9 F. Supp. 590 (C. Cls.), certiorari denied, 296 U. S. 636; *Standard Oil Co.* v. *United States,* 10 F. Supp. 550 (C. Cls.), certiorari denied, 296 U. S. 597; compare *Billings* v. *United States,* 232 U. S. 261, 284–288. The Commissioner did not assess any interest on the unpaid taxes when the assessment was made on June 14, 1924 (R. 66–69). The Court of Claims did not include any interest for the period prior to the deficiency assessment in its judgment (R. 81–82, 45).

It thus results that the only question presented for the decision of this Court is whether the Government is entitled to recover interest from the date of notice of the deficiency.

Section 250 (e) of the Revenue Act of 1918 (*infra,* p. 13) provides that if any tax remains unpaid

[1] The contention is, in any event, precluded by decisions of this Court. See *United States* v. *Verdier,* 164 U. S. 213, 218–219; *United States* v. *North American Co.,* 253 U. S. 330, 336; *Boston Sand Co.* v. *United States,* 278 U. S. 41, 49; *United States* v. *Commonwealth Line,* 278 U. S. 427.

after the date when it is due, and for ten days after notice and demand by the collector, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, *plus interest at the rate of 1 per centum per month* upon such amount from the time it became due. Substantially the same provision was continued in the later Acts until the enactment on August 30, 1935, of the Revenue Act of 1935; Section 404 of this Act (*infra*, p. 14) provided that interest thereafter accruing upon any internal-revenue tax not paid when due should be at the rate of 6 per centum per annum. It follows that, if notice and demand were made on petitioner, the United States is entitled to interest at 12 per cent per annum to August 30, 1935, and 6 per cent thereafter.

The amended counterclaim filed for the Government sets forth that petitioner was indebted to the respondent for income taxes duly assessed against the petitioner for the year 1918 in the amount of $191,403.77, and that petitioner "was duly notified of such assessment" (R. 42). The Court of Claims found that on June 14, 1924, the Commissioner of Internal Revenue assessed against the petitioner a tax for 1918 of $191,403.77, in addition to that already assessed and paid, "and duly notified plaintiff with regard thereto", but that no part thereof had been paid (R. 66).

On the pleadings and this finding of fact, the Court of Claims held in its original opinion that interest should be allowed the Government computed on the amount of the additional assessment at the rate of 6% from June 14, 1924, the date of the assessment, to April 6, 1936, the date of the original judgment (R. 83). Thereupon respondent filed a motion for a new trial in which it was contended that interest should have been computed at 12% per year to August 30, 1935, and at 6% per year thereafter (R. 43, 45–46). The Court of Claims in its memorandum opinion of October 5, 1936, said that the record failed to show that any demand was made for the payment of the additional tax when the assessment was made and notice given in June, 1924 (R. 4–6). The special findings of fact were not amended to find an absence of demand. The court therefore denied the claim for interest of 12 per cent but nevertheless continued its allowance of interest of 6 per cent (R. 45–46).

No question was raised in the court below as to the lack of notice of assessment and demand for payment of the additional tax assessed in June, 1924. (See R. 43.) Respondent's counterclaim alleged petitioner was duly notified of such assessment, and in its special findings of fact the Court of Claims in like language found that "the Commissioner * * * duly notified plaintiff with regard thereto." (R. 66.) This language is in gen-

eral terms, but was sufficient for the issues presented to the Court of Claims for decision. We submit that it is necessarily the equivalent of a finding that notice of assessment and demand for payment were given and made.

By Section 3184 of the Revised Statutes (*infra*, p. 15) it is made the duty of Collectors of Internal Revenue, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue to "give notice to each person liable to pay any taxes stated therein * * * stating the amount of such taxes and demanding payment thereof." Under the terms of this statute no provision is made for the Collector to give notice of the deficiency without at the same time demanding payment.

Under the established practice in the Bureau of Internal Revenue in respect of assessments of additional taxes, the forms for the notice and demand are prepared in the office of the Commissioner and accompany the assessment list when it is forwarded to the Collector for his use in complying with the statutory requirement. (See SOC–Mim. 2550, issued by the Commissioner of Internal Revenue to all Collectors on July 23, 1920, Appendix B, *infra*, p. 16). Moreover, equally well established practice demonstrates that the form for notice of the deficiency assessment includes also a demand for its payment. (See Appendix B, *infra*, p. 18.)'

There is, then, both a statutory requirement and established administrative practice that the Collector give notice and make demand for payment within ten days after receipt of the assessment list from the Commissioner. The finding of the Court of Claims that "the Commissioner * * * duly notified" petitioner could have meant nothing but that the Commissioner set in motion the normal administrative machinery which resulted in a notice demanding payment. While it is a rather summary method of stating the actual facts, the issues which the parties, and the Court of Claims in its original opinion, considered to be before the court did not require any greater particularity. Since there was no evidence to indicate a departure from the statutory and administrative procedure, the presumption of official regularity is sufficient to make this finding the equivalent of a finding of notice and demand by the Collector. See *Pacific States Co.* v. *White*, 296 U. S. 176, 186; *Thompson* v. *Consolidated Gas Utilities Corp.*, No. 89, October Term, 1936. We submit that this is more than sufficient to overcome the burden of proof upon which petitioner places its chief reliance (Br. 20–21).

The only consideration which would indicate that the Collector did not give notice and make demand is the statement in the memorandum opinion of the Court of Claims. (R. 46.) But the opinion may not be examined to supplement the findings of fact. *United States* v. *Esnault-Pelterie*, 299 U. S.

201, 206; *United States* v. *Wells*, 283 U. S. 102, 120; *Brothers* v. *United States*, 250 U. S. 88, 93; *Crocker* v. *United States*, 240 U. S. 74, 78.

It results that the findings of the Court of Claims must be taken to mean that there was notice and demand by the Collector. It is true that there was no express finding to this effect. But, as this Court said in *United States* v. *Wells, supra*, 120, the facts which are a "necessary inference" from those found may be accepted by this Court. In other words, the facts found by the Court of Claims "are sufficient to compel decision" (*United States* v. *Esnault-Pelterie, supra*, 206) as to the issue of notice and demand by the Collector when considered in the light of his statutory and regular administrative duties. See also *Stone* v. *United States*, 164 U. S. 380; *Crocker* v. *United States*, 240 U. S. 74; *Brothers* v. *United States*, 250 U. S. 88; *United States* v. *Pugh*, 99 U. S. 265; *Botany Mills* v. *United States*, 278 U. S. 282.

We recognize that this interpretation is contrary to that of the Court of Claims as expressed in its memorandum opinion. If this circumstance should be considered sufficient to raise a doubt that demand for payment was, in fact, made as provided for in the statute and by the established practice, we submit that the case should be remanded to the Court of Claims in order that its findings may be supplemented and clarified, with authority to take additional evidence if necessary to permit a finding disclosing the actual situation.

See *United States* v. *Jefferson Electric Co.*, 291 U. S. 286, 406; *Luckenbach S. S. Co.* v. *United States*, 533, 539.

We therefore submit that the Government is entiled to interest on the additional tax assessed against the petitioner on June 14, 1924, under the applicable statutory provisions awarding interest on a tax which became delinquent and remained unpaid. The only error of the Court of Claims was its failure to compute interest at the statutory rate of 12% per year from June 14, 1924, to August 30, 1935, but of this error the respondent has not complained.

CONCLUSION

Wherefore, it is respectfully submitted that the decision of the Court of Claims should be affirmed, or, if deemed necessary, the case should be remanded to the Court of Claims in order that its findings may be supplemented and clarified, with authority to take additional evidence if necessary to permit a finding disclosing the actual situation.

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MARCH, 1937.

APPENDIX A

Revenue Act of 1918, c. 18, 40 Stat. 1057, 1083:

SEC. 250. * * *

(b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the installments as recomputed, the excess so paid shall be credited against the subsequent installments; and if the amount already paid exceeds the correct amount of the tax, the excess shall be credited or refunded to the taxpayer in accordance with the provisions of section 252.

If the amount already paid is less than that which should have been paid, the difference shall, to the extent not covered by any credits then due to the taxpayer under section 252, be paid upon notice and demand by the collector. In such case if the return is made in good faith and the understatement of the amount in the return is not due to any fault of the taxpayer, there shall be no penalty because of such understatement. If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency, plus interest at the rate of 1 per centum per month on the amount of the deficiency of each installment from the time the installment was due.

* * * * *

(e) If any tax remains unpaid after the date when it is due, and for ten days after

notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: *Provided*, That as to any such amount which is the subject of a bona fide claim for abatement such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of ½ of 1 per centum per month.

* * * * *

Revenue Act of 1926, c. 27, 44 Stat. 9, 64:

SEC. 283. * * *

(d) In the case of any assessment made after the enactment of this Act in respect of a tax imposed by any Act of Congress prior to November 23, 1921, interest upon the tax proposed to be assessed shall be assessed at the same time as such tax, shall be paid upon notice and demand from the collector, and shall be collected as part of such tax, at the rate of 6 per centum per annum, from the date of the enactment of this Act to the date such tax is assessed, or, in the case of a waiver under subdivision (d) of section 274, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

Revenue Act of 1935, c. 829, 49 Stat. 1014:

SEC. 404. INTEREST ON DELINQUENT TAXES. Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue

tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.

(U. S. C., Sup. II, Title 26, Sec. 1693 (a).)

Revised Statutes, Sec. 3184:

Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. * * *

(U. S. C., Title 26, Sec. 1545.)

APPENDIX B

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF
INTERNAL REVENUE,
Washington, D. C., July 23, 1920.

SOC–Mim. 2550.

INCOME TAX ASSESSMENT LISTS AND DEMAND NOTICES FORMS 7658 AND 7659

Collectors of Internal Revenue:

Beginning with the July list the Income Tax Unit will prepare the Bureau Assessment List for assessments made by the Bureau on Form 23–A. At the same time, first and second demand notices, Forms 7658 and 7659, are prepared and are ready to mail to the taxpayer. Upon receipt of the lists from the Bureau, Collectors are requested to immediately mail Form 7658 which is the first demand notice. A suspense file should be kept of Form 7659 and as the Forms 7658 are returned by the taxpayers, the corresponding second demand notice should be withdrawn. If the first notice is not returned at the expiration of the ten-day period, the second notice should be mailed immediately.

The demand notices will be numbered to correspond with the taxpayer's page and line number on the list. They will begin with 0 each month and be prefixed by the abbreviation for the month, i. e., the July list and demand notices will be designated as J1. 00, August, Ag. 00, etc., as outlined in Office Procedure XVIII.

For follow-up purposes, it is deemed advisable to make notation on the list opposite the taxpayer's

name in the "Remarks" column of the date on which the first notice was mailed and, if a second notice is necessary, the date on which it was mailed. If the taxpayer neither returns nor replies to either of the demand notices within the time provided by law, a warrant of distraint should be issued.

The suspense file of Forms 7659 should be arranged by due dates. This facilitates prompt mailing and will aid in matching the first notices as they are returned.

WM. M. WILLIAMS,
Commissioner.

TREASURY DEPARTMENT,
Washington, March 3, 1937.

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of original SOC Mimeograph 2550 dated July 23, 1920, signed by Wm. M. Williams, Commissioner, on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

F. A. BIRGFELD,
Chief Clerk, Treasury Department.

EXTRACTS FROM FORMS 7658 AND 7659 FOR NOTICE AND DEMAND, IN USE FROM 1920 TO JULY 1924

INCOME, WAR-PROFITS, AND EXCESS-PROFITS TAX

NOTICE AND DEMAND FOR TAX

Form 7658

UNITED STATES INTERNAL REVENUE SERVICE

Notice is hereby given that there has been assessed against you the amount of tax stated on this notice. Demand is hereby made for the immediate payment of said tax. If payment is not made within ten days after date of this notice, the Act provides that a penalty of 5 per cent of the amount of tax due will be added, plus interest at the rate of 1 per cent per month, from _____ until paid.

Date _____

INCOME, WAR-PROFITS, AND EXCESS-PROFITS TAX

SECOND NOTICE AND DEMAND FOR TAX

Form 7659

UNITED STATES INTERNAL REVENUE SERVICE

Demand is hereby made for the payment of the taxes stated on this notice with a penalty of 5 per

cent which has been incurred by failure to pay such taxes within the prescribed time. Beginning on the due date stated below, interest will also accrue at the rate of 1 per cent per month until paid. If payment of tax, penalty, and interest is not received within ten days, the Act provides that collection with costs shall be made by seizure and sale of property.

Due date _____.

TREASURY DEPARTMENT,
Washington, March 6, 1937.

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed are true copies of Notice and Demand Forms 7658 and 7659 as originally issued in 1920, and in use until July 1924, as shown by the records of the Bureau of Internal Revenue on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[SEAL] F. A. BIRGFELD,
Chief Clerk, Treasury Department.

U. S. GOVERNMENT PRINTING OFFICE: 1937